



MORAL DAMAGE RESULTING FROM BETRAYAL AND ITS LEGAL ASPECTS

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ABSTRACT

This scientific article analyzes the legal nature of the recovery of moral damage caused by marital infidelity (treason) and its assessment as civil liability. The mechanisms for protecting personal non-property rights provided for in the Civil Code of the Republic of Uzbekistan are studied, and the impact of treason on these rights is highlighted. The experience of Japan, the USA, South Korea, and European countries is also considered from a comparative legal perspective. As a result of the study, gaps in national legislation are identified, and proposals and recommendations are developed to improve the criteria for applying compensation for moral damage.

Introduction

In modern society, the stability of the family institution is considered one of the essential conditions for maintaining social relations. Marriage is based not only on legal obligations but also on moral responsibilities. Mutual respect, trust, and fidelity between spouses constitute the foundation of family relations. However, in recent years, the growing number of family disputes, particularly divorces caused by marital infidelity, has necessitated a more in-depth legal examination of this issue. Infidelity is one of the most serious factors leading to the breakdown of a family, as it not only results in the dissolution of marriage but also negatively affects an individual's psychological well-being. In such cases, the injured party often argues that their dignity has been undermined, their honor and reputation have been violated, and they have suffered emotional distress. At the same time, current legislation does not recognize infidelity itself as a separate civil offense. As a result, no uniform approach has been developed in judicial practice regarding the recovery of compensation for non-pecuniary (moral) damage arising from such circumstances. Although the Civil Code of the Republic of Uzbekistan provides for the protection of personal non-property rights and compensation for moral damage, the legal criteria for applying these provisions to cases involving marital infidelity have not been clearly defined.

The purpose of this article is to examine the legal grounds for recovering compensation for moral damage caused by marital infidelity, to analyze the relevant provisions of national legislation, and to develop scholarly conclusions and recommendations for improving legislation in this field through a comparative study of foreign legal experiences.

Methodology

The research employed both general scientific and specialized legal research methods. In particular, the methods of analysis and synthesis were used to examine the institution of moral damage and the content of personal non-property rights. Through the formal-legal method, the provisions of the Civil Code of the Republic of Uzbekistan, especially those concerning compensation for moral damage and the protection of honor and dignity, were interpreted and analyzed. Using the comparative legal method, the legislation and judicial practices of Japan, the United States, South Korea, and several European countries were studied and compared with regard to approaches to liability arising from marital infidelity. Furthermore, the systematic analysis method was applied to identify the interrelationship between family law and civil law norms and to evaluate their practical application. Based on the findings of the study, problematic aspects of the existing legal framework were identified, and proposals were developed to clarify the criteria for awarding compensation for moral damage and to ensure greater consistency in judicial practice.

Research results

In civil law, moral damage is regarded as harm associated not with a person's property interests, but with adverse effects on their personal non-property rights and intangible benefits. Such damage may manifest in the form of emotional suffering, humiliation, impairment of honor and dignity, or violations of the right to privacy. According to Article 1021 of the Civil Code of the Republic of Uzbekistan, if a citizen suffers physical or emotional distress as a result of a violation of their personal non-property rights, a court may award monetary compensation for moral damage [1]. This provision serves as an important mechanism of civil-law protection and demonstrates that moral damage is afforded legal protection comparable to that of pecuniary damage.

Furthermore, Article 99 of the Civil Code provides for the protection of a citizen's honor, dignity, and business reputation. In cases involving defamation, insult, or dissemination of information damaging a person's reputation, courts may order the retraction of such information and award compensation for moral damage [2]. Article 100 protects the inviolability of private life, including protection against the unlawful disclosure of correspondence, photographs, and other personal information [3].

According to legal scholar M.K. Sulaymonov, the institution of moral damage in civil law constitutes "a mechanism aimed at protecting the values inherent in a person's individuality," and its primary purpose is to restore the victim's psychological balance [4]. Russian scholar A.P. Sergeyev likewise notes that although moral damage lacks a direct pecuniary equivalent, it should not remain without legal protection [5]. Therefore, the institution of moral damage is closely linked to the protection of personal non-property rights, and violations of such rights may give rise to civil liability.

The duty of fidelity between spouses is one of the fundamental moral principles underlying family relations. Although the Family Code establishes that spouses must live on the basis of mutual respect, care, and cooperation, marital infidelity is not recognized as a separate legal offense. Consequently, infidelity itself is not automatically treated as a civil-law tort. From a legal perspective, infidelity may be assessed in two different ways:

1. As a moral wrongdoing (serving only as grounds for divorce);
2. As conduct causing harm to personal non-property rights.

If the infidelity remains private and merely leads to the dissolution of the marriage, it generally serves only as a basis for divorce. However, where it involves:

- Public humiliation of the spouse;
- Dissemination of private correspondence or photographs;
- Accompanying acts of insult or defamation,

Articles 99 and 1021 of the Civil Code may become applicable.

Legal scholar N.I. Krasavchikov emphasizes that violations of personal non-property rights may arise not only through direct insults but also through any conduct that diminishes an individual's social standing [6]. From this perspective, marital infidelity may, in certain circumstances, cause harm to a person's honor and dignity.

Foreign experience

An analysis of foreign legislation demonstrates that the legal consequences of marital infidelity are not assessed uniformly across different legal systems. In some countries, infidelity is regarded solely as grounds for divorce, whereas in others it may be interpreted as a violation of personal non-property rights and therefore serve as a basis for claiming compensation for moral damage.

In continental European legal systems, such as those of Germany, France, and Spain, infidelity is primarily evaluated within the framework of family law. In these countries, marriage is viewed as a social institution founded upon mutual trust between spouses; however, the breach of this trust is generally not recognized as a civil-law tort. Consequently, courts usually limit their decisions to divorce, alimony, and the division of property. Compensation for moral damage is awarded only in cases involving humiliation of honor and dignity, defamation, or violations of privacy rights [7].

The Japanese legal system demonstrates a distinctive approach in this regard. Under Japanese civil law, the violation of marital fidelity is interpreted as an infringement of a spouse's "right to family peace and harmony." Therefore, courts may award compensation for moral damage not only against the unfaithful spouse but also against a third party who knowingly entered into a relationship with a married person. In judicial practice, the amount of compensation is determined based on factors such as the duration of the marriage, the existence of children, and the extent to which the family relationship has been disrupted [8].

In several states of the United States, certain historical common-law causes of action continue to exist. In particular, claims known as *alienation of affection* and *criminal conversation* allow a spouse to seek damages from a third party who interfered with the marital relationship. In such cases, the plaintiff must prove the existence of a valid marriage, the presence of a genuine marital relationship between the spouses, and that the actions of the third party caused the breakdown of that relationship [9].

The experiences of South Korea and China are also noteworthy. Although adultery has not constituted a criminal offense in South Korea since 2015, civil courts may still award compensation when psychological harm has been established. In Chinese judicial practice, infidelity may serve as a basis for compensation during divorce proceedings, particularly where it involves cohabitation with a third party or the birth of a child outside the marriage [10].

The comparative analysis conducted in this study indicates that although infidelity itself is not generally regarded as an independent legal wrong in many jurisdictions, it may nevertheless give rise to civil liability when it causes harm to personal non-property rights. Therefore, the key criterion is not the mere fact of infidelity, but rather the existence of a real adverse impact on a person's honor, dignity, reputation, or psychological well-being.

The findings further suggest that where infidelity is accompanied by humiliation of honor and dignity, violations of privacy, or the infliction of emotional suffering, it may reasonably be regarded as a basis for civil liability. Accordingly, it appears advisable to clarify the legal criteria governing compensation for moral damage in national legislation, particularly with respect to its application within family-law disputes.

Conclusion

In conclusion, marital infidelity, by its very nature, primarily belongs to the sphere of morality and family relations. For this reason, current national legislation does not explicitly recognize infidelity as an independent civil-law offense and generally treats it as a ground for the dissolution of marriage. Nevertheless, in certain circumstances, infidelity may undermine an individual's honor, dignity, reputation, and right to privacy, thereby causing emotional distress and moral suffering.

The provisions of the Civil Code concerning the protection of personal non-property rights make it possible to award compensation for moral damage in such situations. Accordingly, it is not the act of infidelity itself, but rather the actual harm caused to an individual's rights and freedoms that should be regarded as the basis for civil liability. From this perspective, neither automatically recognizing infidelity as grounds for compensation nor treating it as a completely legally irrelevant phenomenon can be considered fully justified.

The results of this research reveal that national legislation lacks clear criteria regarding this issue, while judicial practice has not yet developed a consistent approach. This creates difficulties in determining the amount of compensation for moral damage, proving emotional suffering, and establishing violations of personal non-property rights. Therefore, it would be appropriate to clarify the conditions under which compensation for moral damage may be awarded in family-related disputes, develop assessment criteria for courts, and improve legal mechanisms for the protection of personal non-property rights.

Although infidelity is primarily a social and moral phenomenon rather than a legal one, its consequences may affect fundamental constitutional values such as honor, dignity, and psychological well-being. In such circumstances, the application of civil-law remedies becomes necessary. Consequently, further development of legislation in this area and greater clarification of law-enforcement and judicial practice would contribute to strengthening the legal protection of citizens..

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